

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

United States of America,	)	
	)	CR-11-2498-TUC-DCB
Plaintiff,	)	
v.	)	
	)	
Marshall Edwin Home,	)	<b>ORDER</b>
	)	
Defendant.	)	
	)	
_____	)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B) and the local rules of practice of this Court for hearing and a Report and Recommendation (R&R) on the Defendant's Motion to Suppress. Before the Court is the Magistrate Judge's Report and Recommendation on the Defendant's Motion to Suppress. The Magistrate Judge recommends to the Court that the Motion to Suppress should be denied. The Defendant filed an Objection to this Recommendation and the Government filed a Response.

**OBJECTIONS**

Defendant objects that the affidavit in support of the search warrant lacked facts reflecting that Defendant acted with criminal intent, because bankruptcy fraud is a specific intent crime. (Objection at 3.) Defendant further objects that the anonymous complainant's tip was uncorroborated and unverified such that a finding of probable cause is unsupported. (Objection at 5.) Finally, Defendant objects that the affiant improperly relied on information that was conclusory and

1 speculative. (Objection at 6.) Information concerning the following in  
2 the search warrant affidavit was faulty: sovereign citizen claim,  
3 warranty deed, bankruptcy fraud, false UCC claims, and the contract  
4 agreement.

#### 5 STANDARD OF REVIEW

6 When objection is made to the findings and recommendation of a  
7 magistrate judge, the district court must conduct a de novo review.  
8 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

#### 9 DISCUSSION

10 The basis for the Motion to Suppress was that the original finding  
11 of probable cause underlying the issuance of the search warrant was  
12 error. A court reviewing a magistrate judge's issuance of a search  
13 warrant must conclude a search warrant is "validly issued if there is a  
14 substantial basis for the magistrate's conclusion 'given all the  
15 circumstances set forth in the affidavit before him ... there is a fair  
16 probability that contraband or evidence of a crime will be found in a  
17 particular place.'" *United States v. Tan Duc Nguyen*, 673 F.3d 1259, 1263  
18 (9th Cir.2012) (quoting *Illinois v. Gates*, 462 U.S. 213, 236 (1983)).  
19 "[T]his 'substantial basis' standard of review embodied the great  
20 deference that should be shown by reviewing courts to magistrates'  
21 probable cause determinations." *United States v. Seybold*, 726 F.2d 502,  
22 503 (9th Cir.1984) (quoting *Gates*, 462 U.S. at 236). The Court must  
23 determine whether there was a substantial basis for the issuing  
24 Magistrate Judge to conclude probable cause existed for the search of  
25 Defendant's properties. "The validity of a search warrant depends upon  
26 the sufficiency of what is found within the four corners of the  
27 underlying affidavit." *United States v. Martinez*, 588 F.2d 1227, 1234

1 (9th Cir.1978). "An affidavit is sufficient if it establishes probable  
2 cause; that is, if the stated facts would reasonably allow a magistrate  
3 to believe that the evidence will be found in the stated location."  
4 *United States v. Taylor*, 716 F.2d 701, 705 (9th Cir.1983).

5 As to the affidavit in support of the search warrant, the Report  
6 and Recommendation (Doc. 198 at 2-4) explains:

7 The nineteen page affidavit for the search warrant is  
8 replete with facts supporting probable cause. (Doc. 193-1,  
9 pp. 7-25). The affidavit states Defendant is suspected of  
10 bankruptcy fraud in addition to other crimes. (*Id.* at 8).  
11 Citing the website of Defendant's former business that he  
12 operated with his wife, the affidavit states Defendant  
13 allegedly filed false Uniform Commercial Code ("UCC") forms  
14 and it describes an alleged fraud scheme in which Defendant  
15 takes part ownership of clients' foreclosed properties and  
16 makes the properties part of his "overall bankruptcy  
17 liquidation." (*Id.* at 9). *Lis Pendens* actions and two UCC  
18 Financing Statements showed Defendant was, in fact, taking  
19 action on various properties in Arizona. (*Id.* at 9). The  
20 affidavit also described, in detail, Defendant and his  
21 wife's attempt to file a UCC Financing Statement on a  
22 property located in Wisconsin. (*Id.* at 9-10). The Wisconsin  
23 UCC Financing Statement also referenced Defendant's company.  
24 (*Id.* at 10).

25 As described in the affidavit, the "bankruptcy liquidation"  
26 was an alleged false involuntary bankruptcy Defendant  
27 initiated against an entity identified as U.S. Corp. (*Id.*  
28 at 13-14). In the bankruptcy litigation, Defendant filed  
proofs of claims against U.S. Corp. totaling more than  
\$2,500,000,000. (*Id.* at 13-14). The affidavit provided  
evidence that Defendant discussed the alleged fraud scheme  
with his wife's probation officer. While the probation  
officer was in their home, Defendant told her he had "saved"  
50 homes from foreclosure and the probation officer saw  
evidence of a business being run in the home. (*Id.* at 11).  
Defendant told the probation officer that he believed  
mortgages were illegal and he had found a legal loophole to  
get people out of their mortgages. (*Id.* at 11).

29 The affidavit also stated Defendant held himself out to be  
30 a sovereign citizen and made statements on his company's  
31 website including "law enforcement is a lie" and "do not let  
32 them take others' rights or yours will disappear also." (*Id.*  
33 at 11). Defendant also made statements about Congress's lack  
34 of constitutional authority to make laws. (*Id.* at 12).

1 The affidavit further described Defendant registering the  
2 name "Federal National Mortgage Association" with the  
3 Arizona Secretary of State as a Trade Name. (*Id.* at 12).  
4 This is the official name of a government sponsored entity  
5 also known as "Fannie Mae." (*Id.* at 12). Defendant was not  
an authorized representative of Fannie Mae and did not have  
authority to convey property owned by the organization. (*Id.*  
at 12). As a purported representative, Defendant signed  
deeds purporting to convey properties. (*Id.* at 12-13).

6 Probable cause of criminal intent can be inferred from the fact  
7 that the Defendant: (1) filed false claims in bankruptcy court totaling  
8 hundreds of millions of dollars, and (2) transferred, without authority,  
9 title to property owned by others to an entity that he controlled.  
10 Twenty-four paragraphs in the affidavit provide information, mostly from  
11 public records and publicly available sources, that establish probable  
12 cause. The facts in the affidavit establish probable cause that the  
13 Defendant filed false claims in Bankruptcy Court and fraudulently  
14 transferred title to property from the true Fannie Mae to an entity  
15 controlled by him. In sum, the Court must consider the totality of all  
16 of the circumstances set forth in the affidavit. *Gates*, 462 U.S. at 238.

17 After a de novo review of the record before the Court, this Court  
18 agrees with the conclusion contained in the R&R:

19 All of the evidence in the affidavit, when pieced together,  
20 shows probable cause that Defendant was engaging in criminal  
21 activity. Defendant is correct that some of the facts  
22 offered in the affidavit, when viewed singularly, are not  
23 evidence of criminal activity. It is the duty of the issuing  
24 magistrate judge, however, to view all the circumstances to  
25 make an informed determination of probable cause. *Gates*, 462  
26 U.S. at 238. A review of the affidavit shows the issuing  
magistrate judge had a substantial basis for concluding the  
affidavit established probable cause. Further, whether the  
anonymous complainant's tip is verified need not be  
determined as the other facts offered in the affidavit  
provided the magistrate judge sufficient probable cause to  
issue the search warrant.

27 (Doc. 198 at 4.)


**CONCLUSION**

Accordingly, after conducting a de novo review of the record,

**IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation (Doc. 198) in its entirety. The Objections (Doc. 204) raised by the Defendant are **OVERRULED**.

**IT IS FURTHER ORDERED** that Defendant's Motion To Suppress (Doc. 189) is **DENIED**.

DATED this 8<sup>th</sup> day of February, 2013.



David C. Bury  
United States District Judge